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In re Application of:

MACHUEL, Gilbert et al.

U.S. Application No.: 10/565,054

: DECISION

PCT Application No.: PCT/EP03/07797

: UNDER

Int. Filing Date: 17 July 2003

: 37 CFR 1.181

Priority Date: None

Atty Docket No.: 89964/JLT

For: APPARATUS AND MEHOD FOR TREATING  
IMAGING MATERIALS

This communication is issued in response to applicants' second "Petition For Withdrawal of Abandonment For Failure To Receive An Office Action," filed 16 May 2007. Applicants' submission has been treated as a petition under 37 CFR 1.181 requesting that the Notification of Abandonment (Form PCT/DO/EO/909), mailed 01 May 2007, be withdrawn.

**BACKGROUND**

**On 17 July 2003**, applicant filed international application PCT/EP03/07797. The thirty-month period for paying the basic national fee in the United States expired at midnight on 17 January 2006.

**On 17 January 2006**, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the requisite basic national fee.

**On 23 May 2006**, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) and the surcharge for late filing of the oath or declaration are required.

**On 01 May 2007**, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the instant application is abandoned for failure to respond to the Notification of Missing Requirements mailed 23 May 2006.

**On 16 May 2007**, applicant submitted a "Petition For Withdrawal of Abandonment For Failure To Receive An Office Action," including a declaration executed by the inventors. Applicant explained that the

Notification of Missing Requirements (Form PCT/DO/EO/905) mailed on 23 May 2006 was never received and requests that the Notification of Abandonment be rescinded.

On 31 July 2007, this office mailed a decision dismissing the 16 May 2007 petition.

On 13 August 2007, applicant submitted the instant renewed petition to withdraw the holding of abandonment under 37 CFR 1.181.

## DISCUSSION

Applicants state in the instant petition that because the "Official Action...was never received by the Petitioner and a search of the file jacket and docket records indicate that the Official Action was not received," the Notice of Abandonment, mailed 01 May 2007, should be withdrawn.

Under MPEP §711.03(c)(I)(A), a proper showing in order to establish that papers were not received must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement by the practitioner attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed (the docket record must also be referenced in practitioner's statement).

With regard to items (1) and (2), applicant has previously submitted the required statements. Hence, items (1) and (2) have been satisfied.

With regard to item (3) above, the renewed petition includes a docket record that lists responses due to the USPTO on 23 July 2006 for all cases handled by the representative's firm. This docket record illustrates the absence of any listings of a response due to a Notification of Missing Requirements.

## CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.181 is GRANTED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation of a Notification of Defective Response (Form PCT/DO/EO/916), which should indicate that the declaration filed 16 May 2007 is defective since it contains non-initialed and/or non-dated alterations.

  
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